IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1439 of 1983
With
FIRST APPEAL No. 1438 of 1983
With
FIRST APPEAL No. 1440 of 1983
With
FIRST APPEAL No. 1441 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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ORIENTAL FIRE & GENERAL INSURANCE CO.LTD. - Appellant(s)
Versus
KAMLESHBHAI DILYABHAI RATHOD & 4 - Defendant(s)

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Appearance :
MR UDAY R BHATT for Appellant(s) : 1,
MR SK BUKHARI for Defendant(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 19/07/2006

ORAL JUDGMENT

1. By way of these appeals, the appellants have challenged the judgement and awards passed by the Motor Accident Claims Tribunal, Surat in MACP No. 228, 229, 230 and 231 of 1982.

2. Heard learned counsel for the parties. The award of the Tribunal is not placed on record of the appeal. However, in the interest of justice, I have gone through

the record & proceedings of the cases and the awards therein. As a result of hearing and perusal of records, I am of the opinion that the Tribunal after considering sections 94, 95 and 96 of the Motor Vehicles Act has passed the award in accordance with law. On the facts and circumstances of the case, the Tribunal has observed that by virtue of IMT clause 16, the appellant insurance company had undertaken larger liability, to imdemnify the insured, the insurance company was liable to indemnify irrespective of the fact that the accident in question for which indemnity was sought had taken place in a private place.

3. At this stage it is relevant to go through a decision of this Court in the case of Oriental Fire and General Insurance Co. Ltd v Rabari Gandu Punja & Ors reported in 1981(22) GLR 1161 wherein para 10 states as under:

> “...Before any place can be considered to be a public place it must be proved to be one where public will have a right of access. It is, therefore, obvious that private premises or compound of private factories where members of public can enter only upon express or implied permission of private owners of those premises, cannot meet with the statutory requirement of sec. 2(24) of the Act...”

Moreover in para 11 it is held as under:

> "...Held that in the instant case the Tribunal has found that the accident had taken place in a private place, i.e. Inside the compound of the tiles factory where the truck in question being taken in reverse ran over a manual labourer presumably an employee of the tiles factory, who was engaged in loading tiles in the said truck. Once that finding is reached, the conclusion is inevitable that under the settings of sec. 95 read with sec. 96 and in the light of the definition clause 2(24), it must be held that the insurance company was not liable compulsorily to cover the risk of injury caused to a third party arising out of use of the vehicles in such a private place..."

4. As a result of hearing and perusal of records and taking into consideration the aforesaid decision, I am in complete agreement with the reasonings adopted and findings arrived at by the Tribunal and no interference is therefore called for in the matters.

5. In the premises aforesaid, appeals are dismissed. No order as to costs.

(K.S. JHAVERI, J.)

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